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In search of the role of punishment from the EU criminal law perspective

W poszukiwaniu roli kary z perspektywy prawa karnego Unii Europejskiej

Abstract: This paper deals with punishment in the context of EU criminal law. Its aim is to search for the role of punishment in the area of European criminal justice, focussing on EU legislation and the case law of the Luxembourg and Strasbourg Courts. The methods used are analysis, synthesis and comparative research. The findings lead to the conclusion that, first of all, the priority behind punishment should be the rehabilitation of an offender, followed by their reintegration into society, and not the severity of imposing a long prison sentence itself. Additionally, a life sentence seems unacceptable without the possibility of conditional release or clemency, as it would be contrary to the European standards of protecting human rights. The role of punishment within the EU is therefore strongly influenced by a human rights-based approach in line with the provisions of the CFR and the ECHR.

Keywords: punishment, EU criminal law, criminal justice, fundamental rights, transnational criminal proceedings

Abstrakt: Niniejszy artykuł omawia kwestię kary w kontekście prawa karnego UE. Jego celem jest poszukiwanie odpowiedzi na temat roli kary w europejskim obszarze wymiaru sprawiedliwości w sprawach karnych, ze szczególnym uwzględnieniem prawodawstwa UE, a także orzecznictwa Trybunałów w Luksemburgu i Strasburgu. Stosowane metody to analiza, synteza i badania porównawcze. W efekcie ustalenia pozwalają na stwierdzenie, że priorytetową rolą kary w prawie karnym UE powinna być przede wszystkim resocjalizacja sprawcy, obok jego reintegracji ze społeczeństwem, a nie sama dotkliwość wymierzenia długoterminowej kary pozbawienia wolności. Dodatkowo kara dożywotniego pozbawienia wolności wydaje się niedopuszczalna bez możliwości warunkowego zwolnienia bądź zastosowania ułaskawienia jako sprzeczna z europejskimi standardami ochrony praw człowieka. Na kształtowanie roli kary w ramach UE duży wpływ ma zatem podejście oparte na prawach człowieka stosownie do postanowień KPP i EKPCz.

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Słowa kluczowe: kara, prawo karne UE, wymiar sprawiedliwości karnej, prawa podstawowe, transnarodowe postępowanie karne

Introduction

Since the early 1990s, there has been a gradual impact of EU criminal law on the national legal orders of the Member States. After the reform introduced by the Treaty of Lisbon, criminal law was naturally restricted to the point that national legislatures and their sovereign powers took on a new character under the EU legal regime. As a result, the adopting of norms of criminal law, both substantive and procedural, has become supranational. In these terms, we may talk about the progressing approximation of criminal law norms within the framework of the EU. This in turn leads to enhancing the area of European criminal justice, in which the respect for fundamental rights of individuals is taking a central place (Baker, Harding 2009: 25–54).

Here, we should stress an important role which is played by the Court of Justice of the European Union (hereinafter: "CJEU"). For it is the case law of the CJEU which has a great impact on the national jurisprudence in criminal matters of the Member States, achieving as unified as possible a legal area throughout the EU (Rosas 2007: 1–16; Arnull 2012; Björnsson, Yuval 2014; Rosas 2022). The essence of the ongoing "judicial dialogue" between the CJEU and national criminal courts lies in the application of the preliminary ruling procedure provided in Article 267 TFEU. We also cannot forget here about the great importance of the European Court of Human Rights (hereinafter: "ECtHR") and the "'semi-vertical' judicial dialogue" which exists between the CJEU and the ECtHR. For this, the CJEU refers *mutatis mutandis* to the case law of the ECtHR (Rosas 2007: 1–16).

In the context of European criminal justice, its key aspect of a human rights-based approach should be highlighted. In light of the case law issued by the Luxembourg and Strasbourg Courts, tendencies appear that prompt a practical functioning of human criminal justice systems in the Member States. This matter fully applies not only to suspects or the accused in pending national criminal trials, but also to those who are sentenced and surrendered to another jurisdiction to serve their custodial sentences (Martufi 2018: 672–688; Montaldo 2018: 223–243; Rodrigues 2019: 17–27).

Importantly, human criminal justice requires some mutual trust, or as it is also called, confidence in the national criminal justice systems. However, this cannot be achieved without a mutual understanding of national legal cultures or traditions, and additionally without the approximation of national legal norms within the EU. Thus, the national judges must still learn to "do justice" in accordance with the rules and values on which European criminal justice is built (Rosas 2007: 1–16; Schroeder 2020: 144–148; Pellonpää 2022: 29–64).

The question of "doing justice" is closely associated with the role of modern punishment itself. Specifically, forms of punishment may vary depending on the legal cultures of and values respected in particular countries. Also, it should be pointed out here that when we think of punishment in the West (or in the European perspective), we typically think of imprisonment imposed on an offender or a criminal (Heiner 2020: 177). This concept of punishment may be described as in a quote by Peter Joyce: "the deliberate use of public power to inflict pain on offenders" (Joyce 2018: 57). But we must remember that he also correctly argues that "inflicted pain on an offender is not universally accepted as a goal of punishment since violence delivered on behalf of the state may serve to legitimise the use of violence by its citizens" (Joyce 2018: 57).

The research studies for this paper lead to some reflections on the role of punishment, which as such is natured by its complexity. First of all, the key question on such a sensitive issue could be what modern punishment is for. In this respect, it seems that the focus should be on the rehabilitation of an offender, as well as their reintegration into a certain community or society. An important objective of this process is said to be the "restoration of reputation" (Joyce 2018: 77). Secondly, more attention should be paid to alternatives to imprisonment (alternative sanctions). Thirdly, life imprisonment appears to be very questionable in regards to the European standards of human rights protection. Last but not least, there is also a noticeable risk of governments following penal populism and adopting a harsh approach in their national criminal policies.

1. Towards human criminal justice in Europe

The humanisation of criminal justice, nurtured by enhancing the protection of fundamental rights which is visible in the current trends of Council of Europe and European Union policies, has a great impact on the attitude towards the role and essence of punishment, as well. This issue also provokes further debate on preventing the impunity of an offender, namely what actions could be taken so that their prosecuting and sentencing are effective and "do justice". Here, a crucial aspect seems to be keeping European citizens safe, but at the same time respecting the rule of law and human rights law are also of great importance.

We may admit that the respect for and protection of fundamental rights is one of the main values for enhancing European criminal justice. Nevertheless, the question that arises is what it means in practice for "European citizens" to secure their legal rights, or in other words, what this value brings individuals – in this case, offenders under the norms of EU criminal law. A starting point could be that there is indeed some extension of humanity towards offenders in criminal justice systems in Europe. Thus, we may come to the general conclusion that the

current human trends in European criminal justice reflect the contemporary general humanisation of the law. Generally, this long-term process of humanisation in law is visible through the actions of international organisations (including NGOs), the laws being adopted and the jurisprudence of the ECtHR and the CJEU. It is obvious nowadays that each individual is a subject of international law, and therefore needs special treatment and protection of their rights, relying on these norms. In this sense, the noticeable humanisation of criminal justice, which is greatly supported by the international protection of human rights, is influencing the national criminal justice systems. Some gradual humanisation of criminal justice, which appears to have become a key factor in shaping the modern function of punishment, provides a further certain impulse to reopen the debate about the essence of preventing the impunity of the offender (Marin, Montaldo 2020).

Since many criminal proceedings across the EU today take on a transnational dimension, it is quite understandable that in national criminal justice systems much attention is paid to a "just and fair" result for the offender, especially through references made to the case law of the CJEU and the ECtHR. This issue, in turn, is closely linked with the years-long discussion in the legal doctrine and sociological or criminological sciences as to the function of criminal penalties and preventing the impunity of the offender. In EU criminal law, the most often discussed question is how to effectively combat crime to maintain the security of the citizens. Its output can be found *inter alia* in the recently adopted EU legal acts and the CJEU case law regarding transnational criminal proceedings. Therefore, the transnational context is taken as a background for the deliberations in this paper.

2. Punishment versus impunity

A starting point for the considerations about punishment and preventing the impunity of the offender could be the following words of Stefano Montaldo:

> the 20th century brought about a significant paradigm shift towards a more individualized approach to prison systems, with a view to minimizing imprisonment and its negative impact on offenders' lives and on crime rates. … The exercise of national *jus puniendi* is not confined to administrating the punishment a wrongdoer deserves any longer. Instead, it pursues the far-reaching objectives of fostering offenders' individual responsibility for their own development and of restoring their participation in social life. As such, individual redemption and collective reintegration become powerful tools for addressing recidivism and providing for citizens' security. (Montaldo 2018: 223–224)

Actually, the above statement finds its reasoning/grounds in the jurisprudence of the CJEU and the ECtHR. To compare, the cases recently decided by the CJEU

may illustrate that there is no legal argumentation in favour of severe punishment. The same concerns the jurisprudence of the ECtHR. Nina Kisic and Sarah King clearly argue that the ECtHR is "shifting away from solely punitive measures to focus on fairness, rehabilitation, and release of incarcerated persons", that is seen on the basis of the Court's interpretation of Articles 3 and 7 ECHR (Kisic, King 2014: 9). They point out that in reference to the rights of convicted persons, the ECtHR tends to follow a policy whereby punishment must be fair and proportional to the crime, as well as crafted in such way that penal systems can aim to rehabilitate the offender (Kisic, King 2014: 11).

The case law of both European courts indicates that there is rather a tendency to apply a more lenient policy towards the offender (Kisic, King 2014: 9–15; Montaldo 2018: 223–243). It seems logical because the severity of the punishment is not always equal to its effectiveness, in the sense of either general or specific prevention. It is maintained that a severe punishment (including even capital punishment) has little deterrent effect. Furthermore, as Barlow notes, "the deterrent effect of punishment may be greater for instrumental crimes" (Barlow 1987: 449), rather than for cases of so-called expressive crimes. The latter ones are usually a result of impulse or the emotional state of the offender (Barlow 1987: 448–449). Also, it is important to point out that the more crucial properties for punishment are argued to be its certainty and swiftness, and not the severity itself (Barlow 1987: 551–552; Akers, Sellers 2004: 18–20).

The latest case law of the ECtHR appears to confirm that there is a kind of positive obligation imposed on the national penitentiary systems to make every reasonable effort to minimise the harmful impact of punishment on the offender, focussing specifically on the negative side effects of long-term incarceration (Montaldo 2018: 226). This is because prisoners are regarded as groups at high risk of victimisation whilst serving their sentences. Their victimisation may largely be related to potential biological, psychological, economic and social abuses in the institutions where they are detained (Barlow 1987: 454–456).

Furthermore, as we noted above, there are two main priorities related to the presupposed role of punishment. First of all, the punishment should be aimed at rehabilitating the offender, and also at socially reintegrating them. Here, the important factors so as to achieve these effects, as Stefano Montaldo argues, should be "clear rules regarding the duration of the deprivation of liberty, adequate detention conditions, and the avoidance of too harsh prison regimes" (Montaldo 2018: 226). Also, when modelling their criminal policies and prison regimes the Member States should focus on the purpose of reintegrating the offender into society (Montaldo 2018: 227). In fact, we may agree with the opinion that "offenders' rehabilitation lies on a thin line between (limited) EU criminal competences and national responsibilities, under the common umbrella of the obligations elaborated by European Court of Human Rights" (Montaldo 2018: 230). At this point, we should also mention Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing

custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. Its Preamble directly states that "[e] nforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person" (OJ 5.12.2008, L 327: para 9).

It seems very important in the discourse of punishment to emphasise the close link between rehabilitation and human dignity (Montaldo 2018: 227–228). Actually, it is true that human dignity is the highest value in the hierarchy of fundamental rights. This particular issue is connected with the prohibition of inhuman or degrading treatment or punishment, as provided for in Article 3 of the ECHR and Article 4 of the Charter of Fundamental Rights of the European Union (hereinafter "CFR"). Accordingly, it is obvious that in light of European law, "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment". EU legal acts, such as Council Framework Decision 2002/584/JHA on the European arrest warrant also directly refers to the observance of fundamental rights. The Recitals of its Preamble state:

> This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. [...] No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. (OJ 18.07.2002, L 190: Recitals 12 and 13)

Thus, the well-reasoned risk of any inhuman or degrading treatment of the offender should constitute absolute grounds for refusing to execute a European arrest warrant and refusing extradition to third countries because of the questionable conditions at the site of detention. Such findings appear to be derived from the CJEU case law, e.g. *Aranyosi and Căldăraru, ML, Dorobantu, Petruhin, Pisciotti, Raugevicius*, *Ruska Federacija*.

Again, we can assert that a key role of punishment under the EU criminal law regime should be not only rehabilitating the offender, but also reintegrating them into society. This approach seems to be evident in light of EU legislation and the case law of the CJEU. However, this approach can only be positively viewed in the cases where it appears truly possible, that is, depending on many particular circumstances, including the type of crime committed and the mental state of the offender. We should also note that the CJEU indicated the significance of reintegration into society in a few cases. Taking as an example the case of João Pedro Lopes Da Silva Jorge, the CJEU directly pointed out that

> the Court has held that ground for optional non-execution [of the EAW] has in particular the objective of enabling the executing judicial authority to give particular weight to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him expires. (C 42/11 2012: para 32)

Interestingly, regarding the comparison of ECtHR and CJEU case law, as Adriano Martufi concludes, the ECtHR's case law seems to take a theoretical approach as it "values offender's responsibility and self-determination as essential components of a rehabilitative treatment", whereas "the case law of CJEU is on the contrary illustrative of a utilitarian approach concerned with security and crime-prevention" (Martufi 2018: 687). He also stresses the risks of possible incoherence between ECtHR and EU law with regard to rehabilitation. Such incoherence may result in national criminal justice systems receiving opposing normative inputs as to the way of dealing with offenders. On the other hand, a possible "rapprochement" between those two European courts might not be ruled out completely. In this event, the CJEU appears to be required to interpret rehabilitation as an individual right, so that the full potential of the CRF may be deployed in matters of crime and punishment (Martufi 2018: 687).

As to preventing the impunity of the offender, it is worth focussing on the case of *criminal proceedings against X*. The CJEU argued here that

> the *ne bis in idem* principle set out in both Article 4(5) of the Framework Decision and Article 3(2) thereof and in Article 54 of the CISA is intended not only to prevent, in the area of freedom, security and justice, the impunity of persons definitively convicted and sentenced; it also seeks to ensure legal certainty through respect for decisions of public bodies which have become final. (C-665/20 PPU 2021: para 99)

Furthermore, the Court also highlighted that

> [i]n particular, when exercising the discretion it enjoys, the executing judicial authority must strike a balance between, on the one hand, preventing impunity and combating crime and, on the other, ensuring legal certainty for the person concerned, in order to attain the European Union's objective of becoming an area of freedom, security and justice, in accordance with Article 67(1) and (3) TFEU. (C-665/20 PPU 2021: para 103)

In this case, the CJEU came into important conclusion indicating that

> [i]t is for the executing judicial authority, when exercising the discretion it enjoys, to strike a balance between, on the one hand, preventing impunity and combating crime and, on the other, ensuring legal certainty for the person concerned. (C-665/20 PPU 2021: para 104)

Discussing the impunity of the offender, the focus also should be on its linkage with the principles of proportionality and certainty of law. In this respect, we should recall Article 49 of the CFR, which deals with the principles of legality and proportionality of criminal offences and penalties. Point 3 reads that "the severity of penalties must not be disproportionate to the criminal offence." Also, in the case *JZ v. Prokuratura Rejonowa Łódź – Śródmieście*, the CJEU made a direct reference to "the practical effect of the principle of proportionality in the application of penalties, as provided for in Article 49(3) of the Charter" (Case C-294/16 PPU 2016: para 42).

Another question in our discussion of punishment could be whether life imprisonment is still desirable in national criminal justice systems. Generally, we may still observe a predominance of imprisonment in national criminal policies of the EU Member States. In this way, a repressive approach is taken to prevent the impunity of the offender, especially to fight against the most serious forms of crime. This trend is in a sense compliant with EU criminal law, as there is no legal prohibition against imposing even life imprisonment. However, as we read in Article 5 (2) of Council Framework Decision (2002/584/JHA) on the European arrest warrant,

> if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure. (OJ 18.07.2002, L 190)

Therefore, it seems that along with undertaking a repressive approach under the EU legal regime, there must be also some room for human rights protection. Finally, we may assume that long-term imprisonment should be regarded as a kind of *ultima ratio* in EU criminal law, restricted to certain, very specific cases.

3. Criteria on criminal sanctions under the EU legal regime

At this point, we should point out that as a rule the EU Member States are obliged to be in compliance with Union law. This also applies to sanctions in national criminal justice systems. As far as sanctions are concerned, the requirements expressed directly in the landmark case 68/88 *Commission v. Greece* must be fulfilled. In other words, sanctions have to be compatible with Greek maize criteria which are articulated in the CJEU judgment: "For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive" (68/88 1989: para 24).

Also, we should add that the above criteria of effective, proportionate and dissuasive sanctions relate both to legislation and practical enforcement in criminal matters. However, it is not an easy task for a national legislature to define their meaning and scope (Klip 2016: 351–370). We may thus admit that the punitive

system of the EU relies on the general idea that sanctions should be effective, proportionate and dissuasive (Nuotio 2020: 20–39), but that on the other hand it appears impossible or at least problematic and not clear enough how to identify the criteria used by the EU legislature "when choosing the *type* of sanctions that EU Member States must provide for in their legal system" (Rodrigues 2019: 21).

In order to better understand the intentions of the EU legislature as regards criminal penalties, it may be helpful to recall the two cases of *Kolev and others (Kolev I) and criminal proceedings against A. P.* In its judgment concerning *Kolev and others*, the CJEU noted that

> while the Member States have … a freedom to choose the applicable penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two, they must nonetheless ensure that cases of serious fraud or any other serious illegal activity affecting the financial interests of the Union in customs matters are punishable by criminal penalties that are effective and that act as a deterrent. (C-612/15 2018: para 54)

Furthermore, the CJEU refers to such significant questions as lack of punishment and protection of fundamental rights of the accused in criminal proceedings. Regarding these issues, the Court maintains that

> it is therefore for the national legislature, where required, to amend the legislation and to ensure that the procedural rules applicable to the prosecutions of offences affecting the financial interests of the European Union are not designed in such a way that there arises, for reasons inherent in those rules, a systemic risk that acts that may be categorized, as such offences may go unpunished, and also to ensure that the fundamental rights of accused persons are protected. (C-612/15 2018: para 65)

The case of *Kolev and others (Kolev I)* illustrates that it is necessary to ensure respect for the right to a defence, as guaranteed by Article 48(2) CFR, which reads that "[r]espect for the rights of the defence of anyone who has been charged shall be guaranteed". Also, the right of accused persons to have their case heard within a reasonable time should be protected, as provided for in Article 6 (1) ECHR: "[i] n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." What is also particularly important to highlight with regard to *Kolev and others* is the CJEU's view that the national courts and prosecutors are required to act in a way that ensures a fair balance between the right to a defence and the need to guarantee the effectiveness of the prosecution and punishment (C-612/15 2018: para 98).

In turn, *criminal proceedings against A. P.* pertains to the interpretation of Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. The

request was made in proceedings relating to the recognition in Estonia of a judgment of the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District, Latvia), by which A. P. was sentenced to a suspended term of three years' imprisonment. In its judgment the CJEU argued for

> Article 1(1) and recitals 8 and 24 that the framework decision pursues three complementary objectives, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public by preventing recidivism, and facilitating the application of suitable probation measures and alternative sanctions, in the case of offenders who do not live in the Member State of conviction. (C-2/19 2020: para.52)

In addition, the Court places obligations on the national authorities to consider in their decisions that

> [i]n particular, the authorities of the Member State in which the sentenced person resides are, as a general rule, more able to supervise compliance with that obligation and to act upon any breach thereof, since they are, in principle, better placed to assess the nature of the breach, the situation of the person committing it and his or her prospects of rehabilitation. (C-2/19 2020: para 53)

A crucial notice is also the statement referring to the protection of victims and the general public:

> the link created between suspension of the execution of the sentence and the obligation not to commit a new criminal offence is intended to deter reoffending. Thus, to permit the competent authority of the Member State of residence to act upon any breach of that obligation is liable to contribute to attainment of the objective of protecting victims and the general public. (C-2/19 2020: para 54)

Conclusions

To conclude, we can assume that judicial national authorities, when taking their decisions on punishments, should be focussed much more on the rehabilitation and reintegration of the offender into society than the long-term severity of imprisonment, as such. Even if there is still a repressive approach in EU criminal law and policy – especially through the possibility of imposing a long-term imprisonment – certain requirements must be fulfilled to be compatible with human rights protection under the CFR and the ECHR.

Considering the role of punishment from the EU criminal law perspective, the focus should be placed on the proper implementation of the Union's laws in the national legal orders, and on following the rules which derive from the jurisprudence of both European courts, namely the CJEU and the ECtHR. The

"judicial dialogue" between the CJEU and the national courts, as well as between the CJEU and the ECtHR, appears to have a very positive impact on the role of punishment in European criminal justice. Importantly, as Nina Kisic and Sarah King note, the jurisprudence of the ECtHR indicates that "the Court is moving toward a model that favors not simply punishment but incentivizing desired behavior" (Kisic, King 2014: 11).

This suggests that current trends in jurisprudence of both European courts involve more lenient penal policy towards offenders, in terms of possibly limiting long-term imprisonment to specific cases and being rather in favour of some probation measures and alternative sanctions – for example, using electronic monitoring in cases where it is certainly possible. In this sense, the priority of punishment from the EU criminal law perspective is to rehabilitate the offender and reintegrate them into society, and not imposing a severe long-term punishment in and of itself.

It is also worth quoting the conclusion of Nina Kisic and Sarah King that

> [i]n its pattern of emphasizing the importance of rehabilitation of offenders and societies while routinely applying the more lenient law, the ECtHR has repeatedly rejected the arguments from several governments that the gravity of the crime should be the primary determining factor in the punishment. (Kisic, King 2014: 13)

However, the responsibility for ensuring compliance with the rules set at the Union level lies with the national criminal courts of the EU Member States and the good will of governing politicians. Last but not least, there is still a need to train criminal judges and defence lawyers taking part in criminal proceedings – and to educate society as a whole.

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References

Akers R.L. and Sellers Ch.S. (2004). *Criminological Theories: Introduction, Evaluation and Application*. Los Angeles: Roxbury Publishing Company.

Arnull A. (2012). '*5 judicial dialogue in the European Union*.' In J. Dickson and P. Eleftheriadis (eds.) *Philosophical Foundations of European Union Law*. Oxford: Oxford University Press, pp. 109–133. https://doi.org/10.1093/acprof:oso/9780199588770.003.0005

Baker E. and Harding Ch. (2009). 'From past imperfect to future perfect? A longitudinal study of the Third Pillar.' *European Law Review* 34(1), pp. 25–54.

Barlow H.D. (1987). *Introduction to Criminology*. Boston-Toronto: Little, Brown and Company.

Björnsson T. and Yuval S. (2014). *'The Court of Justice of the European Union.'* In Y. Shany (ed.) *Assessing the Effectiveness of International Courts*. Oxford: Oxford University Press, pp. 277–306. https://doi.org/10.1093/acprof:oso/9780199643295.003.0012

Heiner R. (2020). *Criminology in Brief*. Routledge: Abingdon.

Joyce P. (2018). *Criminology and Criminal Justice*. Routledge: Milton.

Kisic N. and King S. (2014). 'Toward a more lenient law: Trends in sentencing from the European Court of Human Rights.' *Human Rights Brief* 21(2), pp. 9–15. Available online: https://www.corteidh.or.cr/tablas/r32819.pdf [28.12.2023].

Klip A. (2016). *European Criminal Law: An Integrative Approach*. Cambridge: Intersentia.

Marin L. and Montaldo S. (2020). *The Fight against Impunity in EU Law*. Oxford: Hart Publishing.

Martufi A. (2018). 'The paths of offender rehabilitation and the European dimension of punishment: New challenges for an old ideal?.' *Maastricht Journal of European and Comparative Law* 25(6), pp. 672–688. https://doi.org/10.1177/1023263X18820678

Montaldo S. (2018). 'Offenders' rehabilitation: Towards a new paradigm for EU criminal law?.' *European Criminal Law Review* 8, pp. 223–243. https://doi.org/10.5771/2193-5505-2018-2-223

Nuotio K. (2020). 'A legitimacy-based approach to EU criminal law: Maybe we are getting there, after all.' *New Journal of European Criminal Law* 11(1), pp. 20–39. https://doi.org/10.1177/2032284420903386

Pellonpää M. (2022). *'Reflections on the principle of mutual trust in EU law and judicial dialogue in Europe.'* In K. Karjalainen, I. Tornberg, and A. Pursiainen (eds.) *International Actors and the Formation of Laws*. Cham: Springer, pp. 29–64. https://doi.org/10.1007/978-3-030-98351-2_3

Rodrigues A.M. (2019). 'Fundamental rights and punishment: Is there an EU perspective?.' *New Journal of European Criminal Law* 10(1), pp. 17–27. https://doi.org/10.1177/2032284419837377

Rosas A. (2022). *'European Union law and national law: A common legal system?.'* In K. Karjalainen, I. Tornberg, and A. Pursiainen (eds.) *International Actors and the Formation of Laws*. Cham: Springer, pp. 11–28. https://doi.org/10.1007/978-3-030-98351-2_2

Rosas A. (2007). 'The European Court of Justice in context: Forms and patterns of judicial dialogue.' *European Journal of Legal Studies* 1(2), pp. 1–16. http://hdl.handle.net/1814/7706

Schroeder W. (2020). 'Limits to European harmonisation of criminal law.' *Eucrim* 2, pp. 144–148. https://doi.org/10.30709/eucrim-2020-008

Legal acts

Charter of Fundamental Rights of the European Union. Official Journal of the European Union of 26.10.2012, C 326, pp. 391–407.

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. Official Journal of the European Union of 18.07.2002, L 190, pp. 1–20.

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. Official Journal of the European Union of 5.12.2008, L 327, pp. 27–46.

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Official Journal of the European Union of 16.12.2008, L 337, pp. 102–122.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Official Journal of the European Union of 13.12.2007, C 306, pp. 1–271.

Treaty on the Functioning of the European Union – Consolidated version of the Treaty on the Functioning of the European Union. Official Journal of the European Union of 9.05.2008, C 115, pp. 1–390.

Court decisions

Judgment of the Court (Grand Chamber) of 5 April 2016 (2016). *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen. Joined Cases C-404/15 and C-659/15 PPU.*

Judgment of the Court (First Chamber) of 25 July 2018 (2018). *ML. Request for a preliminary ruling from the Hanseatisches Oberlandesgericht in Bremen. Case C-220/18 PPU.*

Judgment of the Court (Grand Chamber) of 15 October 2019 (2019). *Dumitru-Tudor Dorobantu. Case C128/18.*

Judgment of the Court (Grand Chamber) of 6 September 2016 (2016). *Aleksei Petruhhin. Case C182/15.*

Judgment of the Court (Grand Chamber) of 10 April 2018 (2018). *Romano Pisciotti v Bundesrepublik Deutschland. Case C-191/16.*

Judgment of the Court (Grand Chamber) of 13 November 2018 (2018). *Denis Raugevicius. Case C247/17.*

Judgment of the Court (Grand Chamber) of 2 April 2020 (2020). *Ruska Federacija v I.N. Case C-897/19 PPU.*

Judgment of the Court (Grand Chamber), 5 September 2012 (2012). *João Pedro Lopes Da Silva Jorge, Case C 42/11.*

Judgment of the Court (Fifth Chamber) of 29 April 2021 (2021). *Criminal proceedings against X. Request for a preliminary ruling from the Rechtbank Amsterdam. Case C-665/20 PPU.*

Judgment of the Court (Fourth Chamber) of 28 July 2016 (2016). *JZ v Prokuratura Rejonowa Łódź – Śródmieście. Case C-294/16 PPU.*

Judgment of the Court of 21 September 1989 (1989). *Commission of the European Communities v Hellenic Republic. Failure of a Member State to fulfil its obligations – Failure to establish and make available the Community's own resources. Case 68/88.*

Judgment of the Court (Grand Chamber) of 5 June 2018 (2018). *Kolev and others (Kolev I). Case C-612/15.*

Judgment of the Court (Fifth Chamber) of 12 February 2020 (2020). *Kolev and others (Kolev II). Case C-704/18.*

Judgment of the Court (First Chamber) of 26 March 2020 (2020). *Criminal proceedings against A. P. Case C-2/19.*

Other documents

European Convention on Human Rights (1950). Strasbourg: European Court of Human Rights, Council of Europe. Available online: https://www.echr.coe.int/documents/d/echr/convention_eng [05.12.2023].

Guide on Article 6 of the European Convention on Human Rights (2022). European Court of Human Rights, Council of Europe. Available online: https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf [05.12.2023].